

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE MAIORANO,

Plaintiff,

-against-

WARDEN CRAIG APKER,

Defendant.

05 Civ. 10697 (RJH)

MEMORANDUM OPINION
AND ORDER

On September 18, 2006, Magistrate Judge Andrew J. Peck issued a Report and Recommendation (“Report”) recommending that this Court deny petitioner’s writ for habeas corpus, and thereby dismiss the petition. Pro se petitioner George Maiorano brought this 28 U.S.C. § 2241 habeas corpus petition challenging the validity of the Bureau of Prison’s (“BOP”) February 2005 Rule, codified as C.F.R. §§ 570.20–.21, limiting placement in a Community Corrections Center (“CCC”) to the final ten percent of his sentence. However, on July 10, 2006, the Second Circuit struck down the BOP’s February 2005 rule in *Levine v. Apker*, 455 F.3d 71 (2d Cir. 2006). In light of that ruling, the BOP no longer applies that Rule to inmates within the Second Circuit, instead using the 1998 BOP Program Statement 7310.04. See *Saleem v. Morrison*, No. 06 Civ. 3113, 2006 U.S. Dist. LEXIS 53419, 2006 WL 21090544, at *1 (S.D.N.Y. Aug. 3, 2006) (Peck, M.J.). Indeed, as the Report notes, petitioner Maiorano was placed in a CCC on August 15, 2006. (Report at 1.) Accordingly, the Report recommends that because petitioner has

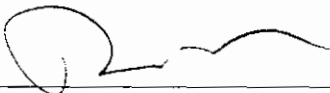
received the relief that he seeks, this Court should dismiss Maiorano's § 2241 petition as moot. Petitioner has not filed objections to this recommendation.

The district court adopts a Magistrate Judge's report and recommendation when no clear error appears on the face of the record. *See Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). If a party fails to object to a report within 10 days of being served with the report, that party waives their right to object and appellate review of the district court's decision adopting the report, absent unusual circumstances, is precluded. *See United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997).

Accordingly, the recommendation of Magistrate Judge Andrew J. Peck is adopted and the petition for a writ of habeas corpus is denied as moot. The Clerk of Court shall dismiss this petition.

SO ORDERED.

Dated: New York, New York
January 23, 2007



Richard J. Holwell
United States District Judge